

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

DONALD E. MORISKY,

Plaintiff,

v.

MMAS RESEARCH LLC, et al.,

Defendants.

CASE NO. 2:21-CV-1301-RSM-DWC

ORDER ON MOTION FOR
VOLUNTARY DISMISSAL

The District Court referred this action to United States Magistrate Judge David W. Christel. Dkt. 25. Presently before the Court is Plaintiff's Motion for Voluntary Dismissal Without Prejudice Pursuant to FRCP 41. Dkt. 32.

Federal Rule of Civil Procedure 41 sets forth the circumstances under which an action may be dismissed. Under Rule 41(a)(1), an action may be voluntarily dismissed without prejudice by the plaintiff if the plaintiff files a notice of dismissal before the defendant files an answer or summary judgment motion and the plaintiff has not previously dismissed an action "based on or including the same claim." Fed.R.Civ.P. 41(a)(1); *Wilson v. City of San Jose*, 111 F.3d 688, 692 (9th Cir. 1997). Once the defendant has responded to the complaint, the action

1 may only be dismissed by stipulation of dismissal signed by all parties who have appeared or “by
2 court order, on terms that the court considers proper.” Fed.R.Civ.P. 41(a)(1), (2).

3 Here, Plaintiff seeks to voluntarily dismiss Defendants Rodney Watkins and Dustin
4 Machi without prejudice. Dkt. 32. Defendants Watkins and Machi have not filed an answer or
5 summary judgment motion. Rather, Defendants Watkins and Machi have only filed motions to
6 dismiss. *See* Dkt. 19, 20. Further, while Plaintiff and other Defendants have been named in
7 related cases, the parties do not assert, nor does the Court find, that Plaintiff has previously
8 dismissed an action against Defendants Watkins and Machi “based on or including the same
9 claim.” Thus, Plaintiff may voluntarily dismiss Defendants Watkins and Machi without a Court
10 order.¹

11 Therefore, the Court construes the Motion for Voluntary Dismissal (Dkt. 32) as a Notice
12 of Voluntary Dismissal. The Clerk is directed to terminate Defendants Watkins and Machi based
13 on the Notice (Dkt. 32).

14 Dated this 10th day of January, 2022.

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17 David W. Christel
18 United States Magistrate Judge
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24 ¹ Defendants Watkins and Machi do not oppose to the Motion for Voluntary Dismissal and have not
asserted dismissal under Fed.R.Civ.P. 41(a)(1) is improper.